

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NOS. C-160276
	:	C-160300
Plaintiff-Appellee,	:	TRIAL NO. B-1500785
vs.	:	
KERBY EMANUEL,	:	<i>JUDGMENT ENTRY.</i>
Defendant-Appellant.	:	

We consider these appeals on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Kerby Emanuel was indicted for felonious assault and pleaded not guilty. The case proceeded to a bench trial. The trial court found Emanuel guilty, entered judgment convicting him of felonious assault, sentenced him to four years' incarceration, and credited him with 379 days served. Emanuel appeals.

We will address Emanuel's assignments of error out of order. In his third assignment of error, Emanuel asserts that his counsel was ineffective. To demonstrate ineffective assistance of counsel, Emanuel must show that counsel's representation fell below an objective standard of reasonableness and that he was prejudiced by counsel's performance. *State v. Bradley*, 42 Ohio St.3d 136, 142, 538 N.E.2d 373 (1989), citing *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). In order to demonstrate prejudice, Emanuel must prove that there exists a reasonable probability that, were it not for counsel's errors, the result

of the trial would have been different. *Bradley* at 143. After reviewing the record, Emanuel has not demonstrated that his counsel's performance fell below an objective standard of reasonableness. We overrule his third assignment of error.

In his second assignment of error, Emanuel argues that his conviction is not supported by sufficient evidence. When reviewing for sufficient evidence, we view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found the essential elements of felonious assault proven beyond a reasonable doubt. *See State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus. Such proof may be established by the testimony of lay witnesses who were in a position to observe the circumstances surrounding the crime. *See State v. Thompkins*, 78 Ohio St.3d 380, 383, 678 N.E.2d 541 (1997), citing *State v. Murphy*, 49 Ohio St.3d 206, 551 N.E.2d 932 (1990), syllabus.

R.C. 2903.11(A)(1) provides that no person shall knowingly cause serious physical harm to another. "A person acts knowingly * * * when the person is aware that the person's conduct will probably cause a certain result or will probably be of a certain nature." R.C. 2901.22(B). "Serious physical harm" means

Any physical harm that carries a substantial risk of death[,] * * * that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity[,] * * * that involves some permanent disfigurement or that involves some temporary, serious disfigurement[, or] that involves acute pain of such duration as to result in substantial suffering or that involves any degree of prolonged or intractable pain.

R.C. 2901.01(A)(5).

The victim, Billy Ray Crawford, had told police that “Zoe” had hit him in the head with some type of metal pipe. Crawford had identified Emanuel in a photo lineup as the assailant. Emanuel had admitted that his nickname was “Zoe” to Officer Joshua Kelley during questioning at the police station. At trial, Emanuel did not deny being “Zoe.” On cross-examination, when the state asked, “Why did you tell the officer your nickname wasn’t ‘Zoe,’ ” Emanuel responded, “Because I don’t have to.”

Furthermore, it is apparent from the record that Crawford had been seriously injured—he was bleeding profusely and had to be transported to the hospital to receive treatment for his head injury. Numerous staples were used to close the wound and Crawford has a scar from the injury. Viewing the evidence in a light most favorable to the prosecution, we find that a rational trier of fact could have found the essential elements of felonious assault proven beyond a reasonable doubt. *See State v. Sellers*, 8th Dist. Cuyahoga No. 91043, 2009-Ohio-485, ¶ 24-25. We overrule his second assignment of error.

In his first assignment of error, Emanuel asserts that his conviction is against the manifest weight of the evidence. Emanuel argues that Crawford’s testimony was not credible and that there was no physical evidence linking him to the crime.

After reviewing the entire record, weighing the evidence and all reasonable inferences, and considering the credibility of the witnesses, we cannot determine that the fact finder lost its way and created a manifest miscarriage of justice such that Emanuel’s conviction must be reversed and a new trial ordered. *Thompkins*, 78 Ohio St.3d at 387, 678 N.E.2d 541, citing *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1983). We acknowledge that there are issues of credibility due to the conflicting testimony about the extent of Crawford’s relationship and interactions with Emanuel. However, the trial court was in the best position to determine the

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credibility of the witnesses. *See State v. Bryan*, 101 Ohio St. 3d 272, 2004-Ohio-971, 804 N.E.2d 433, ¶ 116. Therefore, we overrule Emanuel's first assignment of error.

We affirm the judgment of the trial court.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

ZAYAS, P.J., MYERS and GORMAN, JJ.

ROBERT H. GORMAN, retired, from the First Appellate District, sitting by assignment.

To the clerk:

Enter upon the journal of the court on April 7, 2017
per order of the court _____.

Presiding Judge